LAI WEE LIAN v. SINGAPORE BUS SERVICE (1978) LTD.

[P.C. (Lord Fraser of Tullybelton, Lord Elwyn-Jones, Lord Scarman, Lord Brandon of Oakbrook & Lord Templeman) March 6 & 7 & April 10, 1984]
[Privy Council Appeal No. 53 of 1982]

Damages – Quantum – Global award for personal injuries – Appeal against award for prospective loss of future earnings.

Practice & Procedure – Grounds of Decision – Duty of Court of Appeal – Remission for assessment or substitution when applicable – R.S.C. 1970, O.57 r. 5

In this case the appellant sustained serious injuries when she was thrown off a bus on which she was travelling as a passenger. The bus was owned by the respondents and operated by their servants. The appellant claimed damages on the ground of the respondents' servants' negligence. Before the trial the parties agreed that liability should be apportioned as to 85% to the respondents and as to 15% to the appellant. They also agreed on the amount of special damages at $24,861.40, which included $24,000 for loss of earnings at $600 per month from the date of accident till the date of trial. The sum of $600 per month was a net sum based on a gross income of $680 per month. The only issue at the trial was the amount of general damages. At the end of the trial the learned Chief Justice gave judgment in favour of the appellant for 85% of $146,917.40. He itemised the damages in the following manner:–

Pain and suffering	$45,000.00
Loss of amenities	$40,000.00
Loss of future earnings	$37,056.00
Special damages (agreed)	$24,861.40
	$146,917.40

The appellant appealed to the Court of Appeal against the award of $37,056.00 for prospective loss of future earnings. The appeal was dismissed – see [1982] 2 M.L.J. 137. The appellant appealed to the Privy Council.

Held: (1) the award for future loss of earnings in the present case which was used by taking a multiplier of 10 and using the tables was completely inadequate. The appropriate figure for the multiplicand should be $600 per month or $7,200 per annum and the appropriate multiplier to be directly applied according to the English practice should be 15 years, to allow for discounting the initial figure of 28 in respect both of future contingencies and advance payment.

(2) the total for loss of future earnings should therefore be $108,000 which should be rounded off to $100,000.

Cases referred to:

(1) *Paul & Anor.* v. *Rendell* [1981] 55 A.L.J.R. 371.
(2) *Lim Poh Choo* v. *Camden and Islington Area Health Authority* [1980] A.C. 174.
(3) *Jamil bin Harun* v. *Yang Kamsiah* [1984] 1 M.L.J. 217.
(4) *Sudevan* v. *Moulton* [1977] 2 M.L.J. xlviii; [1979] 2 M.L.J. cxxxix.
(5) *Chan Kam Lan* v. *Ong Lean Kee* [1979] 1 M.L.J. xxxviii.
(6) *Murtadza bin Mohamed Hassan* v. *Chong Swee Pian* [1980] 1 M.L.J. 216.
(7) *Lai Chi Kay & Ors.* v. *Lee Kuo Shin* [1981] 2 M.L.J. 167.
(8) *Mc Guinness* v. *Ahmad Zaini* [1980] 2 M.L.J. 304.
(9) *Low Ah Tow* v. *Yusof bin Kayab* [1954] M.L.J. 112.
(10) *Pahang Lin Siong Motor Co. Ltd. & Anor.* v. *Cheong Swee Khai & Anor.* [1962] 1 M.L.J. 29.
(11) *Low Kok Tong* v. *Teo Chan Pan* [1982] 1 M.L.J. 62.
(12) *Selvanayagam* v. *University of West Indies* [1983] 1 W.L.R. 585

PRIVY COUNCIL APPEAL FROM SINGAPORE.

Nigel Murray (*V. Ramakrishnan* with him) for the appellant.

Abdul Rashid bin Abdul Gani (*Bryan Ghows* with him) for the respondents.

Cur. Adv. Vult.

Lord Fraser of Tullybelton (delivering the judgment of the Board): This is an appeal by the plaintiff in a personal injuries case. It relates only to the quantum of damages awarded. The award was made in the High Court of Singapore by Wee Chong Jin C.J., and was upheld on appeal by the Court of Appeal of Singapore.

On August 15, 1978 the appellant sustained serious injuries when she was thrown off a bus on which she was travelling as a passenger. The bus was owned by the respondent and operated by their servants. On August 31, 1979 the appellant issued a writ against the respondent claiming damages on the ground of their servants' negligence. Before the trial the parties agreed that liability should be apportioned as to 85% to respondent and as to 15% to the appellant. They also agreed on the amount of special damages at S$24,861.40, which included $24,000 for loss of earnings at $600 per month from the date of the accident till the date of trial. The sum of $600 per month was a net sum, based on a gross income of $680 per month. The only issue at the trial was the amount of general damages. At the end of the trial the learned Chief Justice gave judgment in favour of the appellant for 85% of $146,917.40. He itemised the damages in the following manner:–

Pain and suffering	$45,000.00
Loss of amenities	$40,000.00
Loss of future earnings	$37,056.00
Special damages (agreed)	$24,861.40
Total damages	$146,917.40

Four witnesses, including two medical witnesses, were called on behalf of the appellant, and in addition some medical reports and other documents were admitted by agreement between the parties. After the evidence had been concluded counsel for both parties addressed the Court and made submissions on, *inter alia*, the amount which should be awarded for loss of future earnings. Counsel for the appellant submitted that the appropriate award under that head would be $135,000. Counsel for the respondent contended for $37,056. The learned Chief Justice awarded $37,056, but without giving any explanation of his reasons for doing so. In fact he made no statement at all of the grounds of his judgment.

The failure to state the grounds of judgment is very much to be regretted. The Rules of the Supreme Court of Singapore deal specifically with this matter, in O.57 r. 5 which provides:–

"5 (1) When a notice of appeal has been filed, the judge who gave the judgement or made the order *must*, unless the judgment was written, certify in writing the grounds of such judgment or order; but delay or failure so to certify shall not prevent the appellant from proceeding with his appeal." (Emphasis added).

The need for a judge to state the reasons for his decision is no mere technicality, nor does it depend mainly on the rules of Court. It is an important part of a judge's duty in every case, when he gives a final judgment at the end of a trial, to state the grounds of his decision, unless there are special reasons, such as urgency, for not doing so. No special reasons exist in this case. An award of damages for personal injuries, particularly where the injuries are of the serious nature suffered by the present appellant, is a matter of great importance to the parties; especially to the plaintiff. The parties are entitled to know the judge's reasons; so are any appellate courts in the event of an appeal. In the present case, neither the parties nor the Court of Appeal nor their Lordships' Board can tell what conclusions the judge drew from the evidence or, except by inference, what process of reasoning led to his award.

Unfortunately, the judgment of the Court of Appeal is brief and almost devoid of reference to the facts, so that their reasons for upholding the judge's award are obscure. The notice of appeal and the petition of appeal to the Court of Appeal stated that the appeal was only against that part of the award giving $37,056 for prospective loss of future earnings, and that it was on the ground that that part of the award was inadequate. The respondent cross-appealed on the ground that the assessment of loss of amenities in the sum of $40,000 was excessive. The judgment of the Court of Appeal consisted of a statement of the appellant's date of birth, a narrative of the amount of the judge's award and the grounds of the appeal and cross-appeal, and the following passage which contains the whole of their reasoning:–

"We have considered the arguments of both counsel in respect of loss of future earnings and loss of amenities. We are of the view that what really matters in cases of damages for personal injuries is the global figure finally arrived at by a trial Judge even if he has calculated the damages under a number of recognised heads. If the global figure arrived at is, in the particular circumstances of each case, reasonable and fair then we do not think that any appellate Court would increase or decrease a component item of damage on the basis that such item is low or excessive. In the instant case the sum arrived at for loss of amenities is $40,000/– and that for loss of future earnings is $37,056.00 computed on a multiplier of 10 applied to a base figure of $400/–. We ourselves think that perhaps a multiplier of 10 is not adequate considering that the Appellant was born on July 22, 1955. However, we are also of the view that the award of $40,000/– for loss of amenities is somewhat generous in all the circumstances of the instant case. On the whole we think that these two items balance each other off to the extent that in our view the global figure of $146,917.40 arrived at is on the whole a fair assessment of the damages for personal injuries suffered by the Appellant in the instant case."

Their Lordships regard that explanation as entirely inadequate in a case where the trial judge had given no explanation at all.

Before considering the facts of the appeal in more detail, their Lordships will refer to a question of general importance which arises. Mr. Rashid, on behalf of the respondent, submitted that the Court of Appeal had rightly held that what matters is the global figure and that, if the global figure was reasonable and fair, an appellate court should not increase or diminish a component item of damages on the basis that that item was either too low or excessive. He sought to support that contention by reference to the advice of this Board, delivered by Lord Diplock, in *Paul & Anor.* v. *Rendell*[1]. It is of course true that at the end of the day the total sum awarded is what matters to both parties. But that does not mean that the component items do not have to be separately considered. They are the necessary parts which make up the whole, and the only proper way of deciding whether the global award is too low or too high is by assessing the separate items and arriving at a fair total – see *Lim Poh Choo* v.

Camden and Islington Area Health Authority(2) and *Jamil bin Harun* v. *Yang Kamsiah*(3) decided by this Board on February 13, 1984. Of course the assessing judge has a considerable range of choice because many of the variable elements in the damages cannot be precisely quantified. This applies notably to the plaintiff's loss of future earning capacity, the assessment of which "involves a double exercise in the art of prophesying not only what the future holds for the injured plaintiff but also what the future would have held for him if he had not been injured" see *Paul* v. *Rendell (supra)* at p. 372. But if the award for loss of future earnings, or for any of the other items, is so far out of line with what the appellate court considers appropriate as to indicate that the assessing judge has erred in principle, and if the substitution of an appropriate award for that item would make a substantial alteration in the total award, then the appellate court has the duty to make the substitution and to alter the total accordingly.

Their Lordships now turn to consider the item in the judge's award in respect of the appellant's loss of earnings capacity. That is the only item now in issue, as the respondent is not cross-appealing against the award for loss of amenities as being excessive. The facts which appear to be material are these. The appellant is a young woman, born on July 22, 1955. She was aged 23 at the date of the accident, and 26½ at the date of the trial. Before the accident she had worked as a free-lance teacher or tutor and her net earnings, as agreed for the purposes of the special damages, were $600 per month. As a result of the accident she suffered very severe injuries. Her purely physical injuries were summarised in a report by Dr. Don, who was the physician in charge of Tan Tock Seng hospital when the appellant was referred to him shortly after the accident. His summary in a written report dated June 24, 1981 was as follows:–

"Physical

(a) Difficulty in ambulation causing handicap in mobility and effective communication from one place to another. In addition there is the social embarrassment of an awkward gait. She will also be prone to falls.

(b) Difficulty in using the Right upper limb especially for writing which has affected her job as a tutor in Mandarin.

(c) The neurogenic bladder is a social embarrassment to her."

Dr. Don also gave oral evidence in the course of which, as recorded by the trial judge, he said this:–

"She has a neurogenic bladder from her neuro injury meaning she has difficulty in controlling her urine. This will cause interference to her sexual life. Not likely to improve. Her memory is impaired especially of recent events. This will affect her chances of employment. No likelihood of improvement. I think there is a personality change although I do not know her before her injury."

He added that she was dependent on her mother for toilet problems.

Dr. Gopal Baratham Senior Neurosurgeon at Tan Tock Seng Hospital said that it would be difficult for the appellant to hold any job because "she looks as if she is of unsound mind". He thought that she would require constant overall supervision for her day to day living.

The appellant's husband gave evidence and said that he had been a close boy friend of hers before the accident, and that she had partially supported him at the University out of her earnings, which he put at $600 to $700 per month. After the accident, on July 9, 1979, he married her "out of sympathy", but the marriage was unhappy partly because she was unable to have sexual intercourse, which she found painful and was emotionally unable to enjoy. She had also suffered a personality change and had become temperamentally unstable. He said he had lived with her in her mother's house for a year after the marriage but left her about June 1981 and at the time of the trial he intended to divorce her. He was then employed and earning a salary of $1,700 per month.

The appellant's mother also gave evidence and said that while the appellant and her husband were living in her house she, (the mother), looked after the appellant and helped her with her toilet requirements, which appears to have been the reference to the appellant's lack of bladder control. Since 1981 the appellant's landlady has looked after her.

None of the evidence seems to have been challenged in cross-examination, and their Lordships, in the absence of any indication that the trial judge regarded it as unreliable, accept it as accurate. All the medical evidence was to the effect that the appellant's physical and mental condition was unlikely to improve. But there was no suggestion that her expectation of life had been reduced. At the date of the trial she was incapable of pursuing her pre-accident occupation as a tutor, and she was not fit for any but the simplest work. Their Lordships conclude that her earning capacity at the date of the trial was virtually nil

and that it will continue to be so for the rest of her life. At most she might be able to do some simple work on a part-time basis, but her earnings could only be minimal. Her whole life has in fact been wrecked. Her mental powers are greatly reduced and her personality has changed. Her physical disabilities are serious and socially embarrassing. She is unable to have sexual intercourse and she has lost the prospect of a happy marriage and the enjoyment of children.

Counsel for the parties agreed that the age of 55 is regarded as the normal retiring age for men and women in Singapore. That is confirmed by some of the cases to which reference was made in argument – see *Sudevan* v. *Moulton*[4], *Chan Kam Lan* v. *Ong Lean Kee*[5] and *Murtadza bin Mohamed Hassan* v. *Chong Swee Pian*[6]. As the appellant's life expectancy is not said to have been affected by the accident, it must be taken that, subject to the ordinary contingencies of life, she is likely to survive until at least the normal retiring age of 55. As she will be unable to earn any significant amount, she will lose the whole amount which, but for the accident, she might otherwise have been expected to earn between the date of the trial and her 55th birthday – that is a period of over 28 years.

The appropriate award for loss of present and future earning capacity falls to be assessed by taking a suitable multiplicand (representing the periodical amount which, but for the accident, the plaintiff might have been expected to earn) and applying to it a suitable multiplier (representing the number of years during which she might have been expected to continue earning, subject to the discounts to be referred to hereafter).

As regards the multiplicand, the figure of $600 was used in calculating the agreed special damages. At the trial Counsel for the appellant (the plaintiff) contended for a multiplicand of $800 per month and a multiplier of 25 years giving a total for future loss of earnings of $135,000. Counsel for the respondent (defendant) contended for $400 and 10 years, giving a total of $37,056. As the learned Chief Justice accepted the latter figure it seems obvious that he must have accepted $400 as the proper multiplicand. The Court of Appeal made no reference to the multiplicand. Mr. Rashid submitted to this Board that $400 was an appropriate figure, having regard particularly to the fact that the appellant was not in regular salaried employment, but worked as a free-lance and might be subject to periods of unemployment or reduced earnings. It is, of course, possible that the Chief Justice may have considered that she would be capable in future of earning some income, although he did not so state.

The appellant's husband said that before the accident she had wanted to be a teacher and that after she had seen him through University she would have undertaken further studies with a view to qualifying as a teacher. If she had qualified, she might have earned more as a teacher than as a free-lance tutor but, on the other hand, she would presumably have earned little or nothing for two or three years while studying. On the whole their Lordships do not consider that the evidence justifies a conclusion that her average net earnings over the 28 years from the date of trial to the retirement date would have been substantially higher or lower than her net earnings before the accident. Accordingly in the light of her husband's evidence, and of the figure of $600 which was agreed for special damages, their Lordships are of opinion that the figure of $400 per month taken by the learned Chief Justice was too low.

The selection of an appropriate multiplier is more difficult. The starting point is the period of 28 years after the date of trial during which the appellant can be expected to live but, in consequence of the accident, not to earn. The figure of 28 years must be discounted to allow for two factors. First there are the inevitable contingencies and uncertainties of human life and working capacity. Quite apart from this action, the appellant might have died or have been incapacitated by some other accident or by illness at any time during the 28 years. The chance of any of these things happening is entirely unpredictable in any individual case. The second factor is more susceptible of measurement; it is that the earnings which the appellant is assumed to have lost would have been spread over her whole future working life whereas any award of damages will be paid to her as a lump sum now. Some discount is required in respect of this early payment. The practice in England is to allow for both these factors (contingencies and advance payment) together by reducing the figure for the multiplier substantially below the number of years during which earning capacity is assumed to have been diminished, and applying the reduced figure as a direct multiplier. For example if, in the present case, the chosen multiplier were 10 years and the multiplicand was $7,200 per annum (i.e. $600 x 12) the total award under this item would be $72,000. In Singapore it appears that there is a common, though not invari-

ables, practice of calculating the item in a rather different way, by reference to a set of tables prepared by Messrs. Murphy and Dunbar, Solicitors, and entitled:—

"Table Computing Capital Sums Required When Invested At 5% Interest Per Annum To Provide Monthly Payments Over A Given Period Of Years ..."

Copies of the tables were made available to the Board. As their description shows, they are calculated upon the assumption that the capital sum (i.e. the sum awarded as damages) will be invested and will earn interest at 5% per annum. Interest at that rate on the gradually declining capital sum is assumed to be available to increase the capital sum awarded. In that way the fact that payment is being made in advance is wholly or partly allowed for, and it is therefore incorrect to make a further allowance for payment in advance, in the way, or at least to the extent, that is done in England.

In a case when 10 years is the appropriate multiplier using the English system under which the multiplier is applied directly, the appropriate multiplier to be used with the tables ought to be some higher figure. This is obvious from comparison of the total award reached on each of the two systems. Thus on the basis of a multiplicand of $600 per month or $7,200 per annum and a multiplier of 10 directly applied, the total award would be $72,000. Compare that with the total award of only $55,584 shown in the tables for a multiplicand of $600 per month with a multiplier of 10. In order to arrive at a total award of $72,000 the multiplier under the tables would be approximately 15 years. Similarly a multiplier of 15 years directly applied to $7,200 per annum gives a total of $108,000; the corresponding multiplier using the tables is approximately 28 years which gives a total of $107,280.

Mr. Murray for the appellant submitted that the use of these tables to calculate loss of future earnings was not authorised by law and was objectionable in principle. Alternatively he submitted that, if the tables are used, they must not be used by the direct application of English precedents as to the appropriate multiplier. Their Lordships do not accept the former submission. They are of opinion that there is nothing contrary to law or improper about the mere use of the tables, provided that their true effect is appreciated and that they are correctly used. The tables are simply arithmetical tables showing results of certain laborious calculations, always on the assumption that a sum, whether received in damages or in any other way, is invested at 5% interest. The calculations are not correctly described as "actuarial"; they involve no element of judgment, actuarial or other, except the arbitrary choice of 5% as the assumed rate of interest.

In *Paul* v. *Rendell, supra,* the use of tables in Australia was mentioned, but there was no suggestion that it is contrary to law.

But Mr. Murray's alternative submission is demonstrably correct, as shown in the examples which have already been quoted. The danger of using the tables is that the user may not appreciate that the multiplier chosen for use with the tables cannot be directly compared with the multiplier directly applied as in England. The user may think that the figure shown opposite monthly payments of say $600 for say 10 years can be compared with the figure that would be produced by direct application of a multiplier of 10 to $600. As already shown that is not so. A striking example of the kind of error which is liable to occur if the tables are used without appreciating the difference between them and the direct application system is found in the case of *Lai Chi Kay & Ors.* v. *Lee Kuo Shin*[7], where the plaintiff was a man aged 24 and Chua J., decided, mainly on the basis of English cases, to take a multiplier of 15. That may well have been an appropriate multiplier to apply directly in accordance with English practice. The learned judge correctly explained his choice of 15 as the multiplier, in a case where the plaintiff had some 40 years of working life ahead in these words at page 171G:—

"In this case I must make a substantial discount because of the accelerated payment, some reduction for the contingency that Lai will not reach the average age and some reduction to allow for other contingencies. Balancing these elements as best I can and taking into consideration the authorities cited I find that the appropriate multiplier to be 15. On this basis the figure for loss of future earnings is $622,800."

$622,800 is shown in the tables as the capital sum required to produce $5,000 per month for 15 years, but if the chosen multiplier of 15 had been directly applied to the loss of earnings at $5,000 per month (60,000 per annum), the total would have been $900,000. The result was that a *double* deduction was made for advance payment.

A similar error seems to have been made in the Federal Court of Malaysia in *Murtadza bin Mohamed Hassan* v. *Chong Swee Pian (supra)* where Chang Min Tat F.J., said that an injured

man aged 46 at the trial had nine actual working years, but that the figure should be reduced to seven years "for contingencies and *for the fact that he would be getting a lump sum"* (emphasis added) and fixed on a sum for loss of future earnings of $15,633 which appears to have been derived from the tables taking loss of wages at $225 per month for seven years. It seems possible that the learned Chief Justice has made a similar error in the present case. He may not have appreciated that if he had applied a straight multiplier of 10 to his multiplicand of $400 per month ($4,800 per annum) it would have produced $48,000 instead of the sum actually awarded of $37,056 which was the sum produced by the tables.

While their Lordships are of opinion that there is nothing contrary to law in the use of the tables, or of any other accurate aid to calculation, it is apparent that there is a possibility (and more than the possibility) of confusion if the tables are used without their significance being fully appreciated. They enable the loss to be calculated more accurately than is possible by the direct application of a multiplier, and for that reason they may reasonably be preferred to the English system, provided that care is taken to avoid confusion between the two systems. Some judges may prefer to use the tables on the ground that a more accurate result can be obtained by using them than by direct application of a multiplier. But, if confusion is to be avoided, it seems desirable that a uniform practice should be followed by all courts in the same area. The practice in Singapore and Malaysia seems to be varied. In the Brunei case of *McGuinness* v. *Ahmad Zaini*[8] Roberts C.J., used a direct multiplier. That appears to have been the usual practice in Singapore before about 1960 – compare *Low Ah Tow* v. *Yusof bin Kayab*[9] with *Pahang Lin Siong Motor Co. Ltd. & Anor.* v. *Cheong Swee Khai & Anor.*[10]. But one recently reported case from Singapore which was brought to their Lordships' attention also showed the use of the direct multiplier (for the "lost years" in a death claim) in *Low Kok Tong* v. *Teo Chan Pan*[11].

Having carefully considered the evidence their Lordships have no doubt that the award for future loss of earnings in the present case, which was reached by taking a multiplier of 10 and using the tables, was completely inadequate. As they have already stated they consider that the multiplicand was also too low. The question then is whether their Lordships ought to remit the case to Singapore for the Courts there to assess this item of the claim afresh in the light of the principles explained herein, or whether this is one of the exceptional cases in which, contrary to the general rule, their Lordships ought themselves to assess the amount. Counsel for the appellant submitted that the Board should make the assessment itself. Counsel for the respondent contended for a remit. Their Lordships have reached a view that this is one of the exceptional cases in which they should assess the item for themselves. They see no reason to suppose that the item in respect of loss of amenities is too high; even if it were now under appeal, which it is not, they would not be in favour of reducing it. They have in mind also that no claim is made for the cost of medical or nursing care in the future. The only item to be considered is that in respect of future loss of earnings. If the correct assessment of that item depended on local conditions in Singapore, of which the Courts of that country would be in a better position to judge than the members of this Board, they would be very slow to undertake the burden of assessing it for themselves – see *Selvanayagam* v. *University of West Indies*[12]. But the assessment of this item depends entirely on the selection of appropriate figures for the multiplicand and the multiplier. Their Lordships, having fully considered the evidence, are in as good a position as the Court of Appeal in making these selections. Accordingly, they propose to do so.

For the reasons already explained their Lordships consider that $600 per month, or $7,200 per annum, is the appropriate figure for the multiplicand. They consider that 15 years is appropriate as the multiplier to be directly applied according to English practice, to allow for discounting the initial figure of 28 in respect both of future contingencies and advance payment. 15 years appears to be consistent with the period taken in comparable cases such as *Low Kok Tong* v. *Teo Chan Pan (supra)* and *McGuinness (supra).* Taking those figures the total for this item would be $108,000 which should be rounded off to $100,000.

Accordingly the total award will be 85% of $209,861 made up as follows:-

Special damages, including loss of earnings to date of trial		$24,861
General damages,		
Pain and suffering	$45,000	
Loss of amenities	$40,000	
Loss of future earnings	$100,000	
Total General Damages		$185,000
		$209,861
85% whereof		$178,382

The total award of $209,861 is more than 40% in excess of the judge's award of $146,917.

Their Lordships will allow this appeal. Judgment should be entered for the appellant for $178,382. The respondent must pay the Appellant's costs of the appeal to the Court of Appeal and before this Board.

Appeal allowed.

Solicitors: *Kingsford Dorman; Herbert Oppenheimer Nathan & Vandyk.*

SINGAPORE REPORTS

IN THE MATTER OF AN ADVOCATE AND SOLICITOR

[O.C.J. (Wee Chong Jin C.J., Sinnathuray & Chua JJ.) January 31, 1984]
[Singapore – Originating Summons No. 456 of 1982]

Legal Profession – Advocate and solicitor convicted of criminal offences – Defect of character making him unfit for his profession – Disciplinary proceedings – Plea of autrefois convict or res judicata rejected – Two years' suspension from practice – Legal Profession Act (Cap. 217), s. 84(1) & 84(2)(a) & (b) – Penal Code (Cap. 103), s. 213.

In the present disciplinary proceedings the complaint was that the respondent had been convicted of criminal offences (see [1981] 2 M.L.J. 215 and [1982] 2 M.L.J. 293) implying a defect of character which made him unfit for his profession. The respondent submitted that he was entitled to have the show cause order discharged on the grounds:

(1) of *autrefois* convict; or

(2) of a doctrine of estoppel, namely issue estoppel, or *res judicata* in its wider sense and

(3) of the court's inherent jurisdiction to stay proceedings on the ground that they were oppressive and an abuse of its process.

Held: (1) in the present case, on the assumption that the doctrine of *autrefois* is available in disciplinary proceedings against an advocate and solicitor, the respondent's plea of *autrefois convict* must fail. One essential ingredient which is necessary to prove in the present proceedings is the respondent's conviction of one or more criminal offences. This ingredient is unnecessary to support a complaint in the first disciplinary proceedings and it follows that the respondent has not been put to peril of disciplinary punishment for the same complaint or "offence" as that which he is charged;

(2) on the facts before the court, the plea of issue estoppel, even if the plea is available in the present disciplinary proceedings, has not been successfully made out by the respondent. It was plain on the facts, which show that the respondent was determined to exhaust all possible avenues in relation to these criminal convictions, that it would be against the interest of the public for the Law Society to withhold applying to the High Court for a show cause order on the delay charge until the Disciplinary Committee which had only recently been appointed had heard the convictions charge and had reported its findings;

(3) the delay charge and the convictions charge although both arise from substantially the same facts have different legal characteristics and the failure to hear together the two show cause orders, one made on January 13, 1981 and the other on September 17, 1982, did not amount to oppression and injustice to the respondent;

(4) on the facts and having regard to all the circumstances and the nature of the offence, the respondent's conviction clearly implies a defect of character which makes him unfit for the profession;